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Attorneys for Plaintiffs, individually and on
behalf of all others similarly situated

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In Re WAL-MART STORES, INC.
WAGE AND HOUR LITIGATION

Case No. C 06 02069 SBA

CLASS ACTION

This Document Relates To:

Case Nos.

C 06 02069 SBA (Smith) and
CV 06 05411 SBA (Ballard)

**DECLARATION OF MARTIN M. SHAPIRO,
Ph.D., IN SUPPORT OF PLAINTIFFS'
OPPOSITION MOTION FOR
SUMMARY JUDGMENT AND/OR
SUMMARY ADJUDICATION ON BEHALF
OF DEFENDANT WAL-MART STORES,
INC.**

Date: April 22, 2008

Time: 1:00 p.m.

Location: United States Courthouse
Courtroom 3, Third Floor
1301 Clay Street
Oakland, CA 94612-5212

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1 I, MARTIN M. SHAPIRO, declare as follows,

2 1. I am a United States citizen, over the age of 21, and competent to testify to the matters
3 stated herein. I am familiar with the facts set forth herein and if called upon as a witness, I could and
4 would competently testify thereto.

5 2. I have a Bachelor's degree from Yale University and a Ph.D. degree from Indiana
6 University with concentrations in Psychology and Mathematics. I also have a J.D. degree from Emory
7 University. Currently, I am a Professor of Psychology at Emory University located in Atlanta,
8 Georgia. I have been a professor at various institutions of higher learning for over 47 years. My areas
9 of interest are in the application of quantitative and scientific concepts of legal processes; the design,
10 construction and evaluation of test and measurement operations and statistics and quantitative
11 measures. I have also taught courses in advanced statistics.

12 3. Attached hereto as Exhibit A is a true and correct copy of my Curriculum Vita.
13 My Vita sets forth an accurate representation of my background and experience.

14 4. I submit this Declaration in response to Defendant's Motion for Summary
15 Judgment/Adjudication as to Plaintiffs, Barry Smith, Michael Wiggins and Danton Ballard.

16 5. I previously have served as an expert in class action employment cases. I have
17 developed formulae in these cases, based upon the employers' machine readable data, for
18 calculating class wide damages and for apportioning theses damages to the individual class
19 members.

20 6. I have been retained as a consultant in the instant cases for Plaintiffs. I also have
21 been retained as an expert in approximately twenty other wage and hour class actions decided or
22 pending against Wal-Mart. Through these other cases involving Wal-Mart, I have gained
23 familiarity with the relevant Wal-Mart electronic databases.

24 7. I have attended the depositions of Wal-Mart employees responsible for three of
25 Wal-Mart's computer databases and I have read deposition testimony of other Wal-Mart
26 Information Technology employees responsible for Wal-Mart's in-store computer systems and
27 home-office computer systems. Specific to the instant cases, I have read the deposition testimony
28

1 of Diana McChristian taken on August 28, 2007 specifically regarding the electronic Payroll data
2 for accrued and available vacation and personal time.

3 8. I have reviewed Wal-Mart Stores' "Payroll and Scheduling Guide." The Guide
4 contains descriptions of numerous computer monitor displays for editing data as well as numerous
5 procedures for generating reports. Separate sections of the guide deal with procedures for
6 terminating employees, determining vacation benefits, determining personal time benefits and the
7 disbursement of cash payments to employees. The data entry and reporting programs used by
8 Wal-Mart in all Wal-Mart and Sam's Club stores include data transfer methods and report
9 generation programs for time-clock punches and payroll calculations. The system permits the
10 entry of time-clock data generated by employees swiping their badges through time-clocks or by
11 management adding, changing or deleting time-clock data via computer work stations. Although
12 these edits modify the time records for payroll purposes, an electronic trail of these deletions,
13 changes and additions is maintained in the Associate database. The time and attendance data in
14 the Associate database are electronically transmitted to a central computing facility at corporate
15 headquarters where they are stored in memory for use in numerous computer operations including
16 payroll calculations.

17 9. Specifically, I am familiar with Wal-Mart's Associate database which tracks
18 employee time, attendance and payment records at the store level. In addition to all time-clock
19 entries, the Associate database contains records of each employee's subsequent payroll additions
20 such as vacation pay, sick pay and personal pay, as well as all actual dollar advances or
21 reimbursements. The Timekeeper-Master table of the Associate database contains records which
22 are created whenever an employee is credited with additional payable hours (such as holiday pay,
23 vacation pay, sick pay, or personal time pay) or dollar amounts for advances and reimbursements.

24 10. I also am familiar with Wal-Mart's Payroll database. The Payroll database, using
25 the information uploaded from each store's Associate database, contains the details of Wal-Mart
26 employee's payroll checks, the hours and dollar amounts attributed to work, vacation, personal
27 and other payroll categories. Wal-Mart's work week ends at midnight Friday, i.e., 12:00 midnight
28 between Friday evening and Saturday morning. Each store's payroll-related information is

1 uploaded to the Bentonville, Arkansas headquarters early Saturday morning after it is finalized at
2 the store level. Pay checks are printed on Sunday, delivered to the stores on Tuesday and
3 distributed to employees on Thursday.

4 11. I also am familiar with Wal-Mart's PeopleSoft database which contains the
5 demographic information for each salaried employee and the job history of each salaried
6 employee. The PeopleSoft database is the product of a commercial software vendor. The job
7 histories include hire dates, termination dates and termination reasons.

8 12. I also a familiar with Wal-Mart's Cash Office database which contains information
9 regarding the cash registers, cash register operators, cash register reconciliation and all cash
10 movements within the store. The movement of cash within the store includes money infusions
11 into cash register drawers, money pulls from cash register drawers, and disbursements of money
12 from the store whether by cash, check or bank deposits. Electronic records of the disbursements
13 of money to employees also are entered into the Associate database from which they then flow
14 into the Payroll database.

15 13. Wal-Mart produced four computer databases: (1) The Associate database for
16 303,998 hourly employees from January 1, 2001 through June 23, 2007, and 174,742 of them
17 have a termination as their last employment action after March 20, 2002, (2) The PeopleSoft
18 database for 4,472 salaried employees, 1,508 of whom have a termination as their last
19 employment action after March 20, 2002, (3) The Payroll database for 156,200 terminated hourly
20 and salaried employees with payroll ending dates from April 5, 2002 through May 25, 2007, and
21 (4) The Cash Office database with entries from August 8, 2003 to July 6, 2007. (Associate
22 database tables from one of the stores were missing and were produced after the completion of the
23 analyses.

24 14. The above databases contain the following information:

25 a. Hire date: The hire date for hourly employees is contained in the asc table
26 of the Associate database. The hire date for salaried employees is contained in the job table of the
27 PeopleSoft database. Hire date is required for the calculation of accrued vacation time and
28 accrued personal time. Accrued vacation time and accrued personal time are based upon the

number of service hours. On each anniversary of an employee's hire date, the employee's accrued vacation time and accrued personal time convert to available vacation time and available personal time, respectively. On each anniversary of an employee's hire date, unused available vacation time and unused available personal time should be paid to the employee.

b. Service hour: "A service hour is time for which the Associate receives compensation from the Company, (i.e., hours worked or benefit hours such as bereavement, holiday, illness protection hours, vacation, personal time, jury duty, etc.)." (Wal-Mart Vacation Policy, PD-64) At the store level, the number of benefit hours and the time clock badge swipes are contained in the timekeeper tables (tmkp_mstr, tmkp_punch, tmkp_audit) of the Associate database and are summarized daily in the pay-sum table of the Associate database. At the headquarters level, the number of work hours and benefit hours are contained in the hr_asc_hours_type and the hr_asc_earnings tables of the Payroll database.

c. Associate type: Hourly employees are either full-time, part-time, or temporary. Salaried employees are full-time. An associate's type is contained in the asc table of the Associate database and in the hr_pd_assoc table of the Payroll database. The accrual of vacation time and personal time is a function of both years-of-service and associate type.

d. Accrued vacation time: "'Accrued' vacation is the amount of time an Associate accumulates based on his/her service hours during the current year to be taken as paid vacation the next year." (Wal-Mart Vacation Policy, PD-64) Full-time employees accrue vacation hours from the start of employment and part-time employees accrue vacation hours after one year of employment. Full-time employees accrue vacation time at a rate of 0.019231 hours for each service hour in the first year, at a rate of 0.038462 in the second through sixth years, at a rate of 0.057692 in the seventh through fourteenth years, and at a rate of 0.076924 in the fifteenth year and thereafter. Part-time employees accrue vacation time at a rate of 0.019231 for each service hour in the second year and thereafter. Accrued vacation hours are contained in the hr_pd_assoc table of the Payroll database. The number of accrued vacation hours is updated on each biweekly payroll ending date. I have verified the accuracy of the biweekly accruals by

1 applying the appropriate years-of-service multiplier rates to the number of service hours contained
2 in the pay-sum table of the Associate database for each biweekly payroll period.

3 e. Available vacation time: “At the Associate’s anniversary date of
4 employment, ‘accrued’ vacation time converts to ‘available’ vacation time. ‘Available’ vacation
5 is the amount of paid vacation time an Associate may use during the current year.” (Wal-Mart
6 Vacation Policy, PD-64) Available vacation hours are contained in the hr_pd_assoc table of the
7 Payroll database. The number of available vacation hours is updated on each biweekly payroll
8 ending date. The number of available vacation hours decreases whenever an employee uses
9 vacation hours and the number of available vacation hours increases on each employment
10 anniversary date. I have verified the accuracy of the biweekly availability by comparing changes
11 in the available hours to the usage and annual insertion of available vacation hours.

12 f. Accrued personal time: “‘Accrued’ Personal Time is the amount of time
13 an Associate accumulates based on his/her service hours during the first year of employment.
14 After one (1) year, ‘accrued’ personal time converts to ‘available’ time. After one (1) year of
15 employment, Associates continue to accrue personal time each pay period based on service
16 hours.” (Wal-Mart Personal Time, PD-65) Personal time accrues at a rate of 0.007693 hours for
17 each service hour beginning with the start of employment for both full-time and part-time
18 employees. Accrued personal hours are not contained in the Payroll database. However, I
19 calculated the number of accrued personal hours on each biweekly payroll ending date. For full-
20 time and part-time employees, the number of accrued personal hours is 0.007693 hours for each
21 service hour in the pay-sum table of the Associate database for each biweekly payroll period. For
22 full time employees and for part-time employees after the first year of employment, I have verified
23 the accuracy of the biweekly accruals by applying the appropriate years-of-service multiplier rates
24 to the number of accrued vacation hours in the hr_pd_assoc table of the Payroll database.
25 Personal hours are accrued at 40% of the accrual rate for vacation hours for first-year full-time
26 employees and for all part-time employees after the first year; personal hours are accrued at 20%
27 of the accrual rate for vacation hours for second through sixth year full-time employees; personal
28 hours are accrued at 13.33...% of the accrual rate for vacation hours for seventh through

1 fourteenth year full-time employees; and, personal hours are accrued at 10% of the accrual rate for
2 vacation hours for fifteenth and subsequent year full-time employees.

3 g. Available personal time: “‘Available’ personal time is the amount of
4 personal time an Associate has available for use.” (Wal-Mart Personal Time, PD-65) Available
5 personal hours are contained in the hr_asc_hours table of the Payroll database. The available
6 personal hours bear the hour-type code ZZ and are updated on each biweekly pay period. Accrued
7 personal hours convert to available personal hours on the anniversary date of the employee’s hire
8 date. I have verified the accuracy of the biweekly availability by comparing changes in the
9 available hours to the usage and annual insertion of available personal hours. Available personal
10 hours also are increased in small increments by the conversion of excess sick hours at the rate of
11 one-half hour of available personal time for each excess sick hour. I have reviewed the
12 hr_asc_hours table of the Payroll database, and I have observed these small biweekly infusions of
13 available personal time. (The Payroll database produced by Wal-Mart in the instant cases does
14 not contain a field for sickness protection hours, even though I have seen such a field in the file
15 layout of the Payroll database produced in other cases.)

16 h. Employee status: The day-by-day employee status for hourly employees is
17 contained in the pay_sum table of the Associate database; employee status for salaried employees
18 is contained in the job table of the PeopleSoft database; and, employee status for all employees is
19 contained in the hr_pd_assoc table of the Payroll database. The change in employee status in the
20 Associate, PeopleSoft, and Payroll tables differentiates the active-employee events from the
21 terminated-employee events.

22 i. Termination date: Termination date is contained in the asc_ter table of the
23 Associate database for hourly employees and in the job table of the PeopleSoft database for
24 salaried employees. The asc_ter table for hourly employees also contains “last day worked” and a
25 yes/no indicator of the employee’s “eligibility for rehire.” The job table PeopleSoft database
26 contains both an action date and an effective date for every personnel action in the employees job
27 history.

j. Termination reason: Termination reason is contained in the ter_rsn table of the Associate database for hourly employees and in the job table of the PeopleSoft database for salaried employees.

k. Hourly pay- rate: The hourly pay-rate for hourly employees is contained in the base_pay field of the hr_pd_assoc table of the Payroll database. The base pay for salaried employees is given as 1/26 of their annual salary. The hourly pay-rate for salary employees is calculated by dividing the amount in the base_pay field of the hr_pd_assoc table of the Payroll database by 80.

l. Geographical Assistance Pay: GAP pay is contained in the DOE (Deductions and Other Earnings) table of the Payroll database. GAP pay, denoted by DOE codes 77, R1, R2 and TG, is calculated as a percentage of the employee's base pay. GAP pay is paid for all service hours – regular pay, overtime pay, vacation pay, personal time pay, etc.

m. Amount of wages due upon termination: The hours of wages due upon termination for hourly employees is contained in the hr_asc_hours table of the Payroll database. Alternatively, the number of hours is contained in the pay_sum table of the Associate database. To calculate the amount of wages due a terminating hourly employee, multiply by the base hourly pay-rate. The hours of wages due upon termination for salaried employees is contained in the hr_asc_hours table of the Payroll database. Alternatively, the number of day's wages due a salaried employee is calculated as the number of work days (five work days in a week) between the beginning of the pay period and the termination date contained in the job table of the PeopleSoft database. To calculate the amount of wages due a terminating salaried employee, multiply by the number of work days prior to termination by one-tenth of the base pay. For the salaried employee, the amount of GAP pay paid in previous biweekly pay periods is reduced by the same proportion used to calculate wages. For the hourly employee, the GAP hourly rate paid in previous biweekly periods is applied to the number of hours owed for the final pay period.

n. Amount of vacation time and personal time due upon termination: The amount due upon termination for vacation time and personal time is the sum of accrued vacation time, available vacation time, accrued personal time, and available personal time, all described

above, plus accrued vacation time and accrued personal time at an accrual rate appropriate to the final pay-out of wages for the last biweekly pay period. That is, the accrued vacation time and the accrued personal time is updated in the calculation to reflect the hours paid in the final pay-out. For those employees receiving GAP pay, Gap pay is applied to the final pay-out of vacation and personal hours.

o. Cash pay-out: The amounts and dates of cash payments made at the store level, by either cash or check, are contained redundantly in the tmkp_mstr and pay_sym files of the Associate database, in the hr_asc_doe file of the Payroll database, and in the cash_fund_trn_txt, cash_fund_xfer and cft_time_keep_data of the Cash Office database. The corresponding monetary details upon which the cash payments for wages and benefits are based are included in the ensuing biweekly payroll entries.

15. Wal-Mart has offered the “DECLARATION OF DENISE MARTIN IN SUPPORT OF DEFENDANT WAL-MART STORES, INC.’S MOTIONS FOR SUMMARY JUDGEMENT AND/OR SUMMARY ADJUDICATION.” Pages 7-12 of the DECLARATION deal with the wage claims of plaintiff sub-class 2, as distinguished from the vacation time and personal time claims of plaintiff sub-class 1.

16. I received the background data production for the DECLARATION two weeks ago and the background data production for the March 25, 2008 “EXPERT REPORT OF DENISE NEUMANN MARTIN, Ph.D.” five days ago. The background material for the latter report contains much of the computer code and data associated with the principle findings contained in both documents. I am still in the process of reviewing the two sets of background material. Therefore, I only shall respond to two points in the analyses described in the DECLARATION: (1) the treatment of negative hours on page 10 of the DECLARATION, and (2) the treatment of “[n]o reported net earnings” on pages 10-12 of the DECLARATION. My review of both documents remains a work in progress.

17. In the DECLARATION, page 10, negative hour entries are described as constituting “off-setting corrections of hours entered incorrectly in the data” or “the movement of hours from one WIN number to another for the same associate.” These characterizations of data

1 entries as “incorrect” are merely unsubstantiated assertions. There is nothing in the database that
2 denotes data entries as “incorrect” and there is nothing in the database with which to pair one
3 positive datum entry with one negative datum entry. There is nothing in the data to indicate that
4 either data entry of a pair is “incorrect.” If, *arguendo*, the positive and negative data entries could
5 be paired, there is nothing in the database to indicate which member of the pair was “incorrect.”

6 18. Furthermore, I have analyzed the Payroll data again and I was unable to find any
7 instances of one Social Security Number being associated with more than one WIN number in the
8 Payroll data. I find nothing in the database to support the conclusion in the DECLARATION,
9 page 10, that, “The negative entries represent the movement of hours from one WIN number to
10 another for the same associate.”

11 19. Therefore, it is my opinion that the treatment of negative hours for wages in the
12 DECLARATION is without merit and does not provide an accurate analysis of negative, unpaid
13 wages.

14 20. With respect to the second issue, it is asserted incorrectly in the DECLARATION,
15 page 11, that I “ignored cash draws” in my analysis. The DECLARATION, page 12, continues by
16 describing a study of how to “move accurately from gross earnings to net earnings using the
17 information contained in the Wal-Mart’s computerized records.” The study “performed this
18 calculation for over three million pay periods for associates in the Payroll Database for whom
19 both gross and net earnings were reported.” It is concluded that the study was “able to match
20 within \$5 the net earnings reported in the Payroll Database for 99 percent of these associate pay
21 periods.”

22 21. The study described in the DECLARATION was conducted on an inappropriate
23 sample. Although the claims in this case are limited to terminated employees the study was not
24 limited to terminated employees, in fact, based upon the number of currently active and newly
25 terminated employees in any Payroll period, most of the included employees must have been
26 active employees. Furthermore, the study was limited to employees for whom both gross earnings
27 and net earnings were reported, even though the pay periods of interest were those for whom there
28 was no net pay amount reported for newly terminated employees.

1 22. Furthermore, the results of the study demonstrate that the methodology employed
2 in the study could not and did not “move accurately from gross earnings to net earnings.” In spite
3 of the fact that the payroll periods were not restricted to newly terminated employee,
4 approximately 1.0 percent of the pay periods, 30,000 pay periods, differed by more than \$5.00
5 from the net pay shown in the database. The error in the 3,000,000 pay periods would amount to
6 a maximum error of \$15,000,000, that is, \$5.00 times 3,000,000 pay periods.

7 23. The conclusion in the DECLARATION, page 12, that the methodology was “able to
8 move accurately from gross earnings to net earnings” assumes that a \$5.00 error between the
9 database net earnings and the methodology’s calculations of net earnings is acceptable. But, there
10 should be no error. A methodology which fails to calculate correctly the net pay due an employee,
11 when all payroll hours, benefits, taxes, and other deductions are stored in the database, certainly is
12 not an accurate methodology. The Wal-Mart Payroll database and the DECLARATION
13 methodology are not using the same formulae. The DECLARATION methodology is “incorrect.”

14 24. As described in the DECLARATION, page 12, the methodology was applied
15 subsequently to the employees with “reported gross earnings but no reported net earnings.” The
16 conclusion in the DECLARATION is that “the unresolved amount is \$1,102.46.” The conclusion
17 contains a reference to footnote 14. In footnote 14, page 12, it is explained that using the
18 methodology, “it is not possible to determine how much of the unresolved net earnings are related
19 to regular and overtime wages versus other wages such as vacation and personal time.”

20 25. Footnote 14 reads, “The \$1,102.46 is calculated starting with total gross wages
21 (regular, overtime and other) because deductions and taxes are not reported separately for
22 different types of earnings. As such, it is not possible to determine how much of the net earnings
23 are related to regular and overtime wages versus other wages such as vacation and personal time.”
24 Footnote 14, refers to the “\$1,102.46” but, of course, the footnote applies to all pay periods
25 because the same methodology was applied to all pay periods. Footnote 14, asserts that “taxes are
26 not reported separately for different types of earnings,” but that is not the source of the problem;
27 the same tax rate is applied to all taxable earnings during the same pay period. The taxes could be
28 apportioned to regular pay, overtime pay, other taxable pay, vacation pay and personal time pay.

1 The operative part of footnote 14 with respect to defendant's methodology is that, "it is not
2 possible to determine how much of the net earnings are related to regular and overtime wages
3 versus other wages such as vacation and personal time."

4 26. The problem with the methodology used for the second issue in the DECLARATION is
5 that it was not designed to distinguish between wages and vacation time. Therefore, the
6 methodology used by Dr. Martin in the analyses of the second issue described in the
7 DECLARATION is incapable of correctly calculating the unpaid wages.

8 27. For the above reasons, it is my opinion that the data analyses contained in the
9 DECLARATION OF DENISE NEUMANN MARTIN analyzing unpaid wages are inaccurate and
10 that there continue to be substantial unpaid wages associated with plaintiff sub-class 2. My
11 analyses will continue as I include further analyses of G.A.P. (Geographical Assistance Pay),
12 employees from one additional store, approximately 4,000 additional terminated employees for
13 whom usable data has not yet been produced and updated data from the period after May 25,
14 2007.

15 28. I have been asked by counsel to describe statistically the un-cashed Wal-Mart
16 payroll checks. Data as to uncashed and escheated checks was provided to me within the last 45
17 days on disks provided by Wal-Mart during discovery. I divided the study of payroll checks into
18 three sets: (1) all payroll checks dated between March 20, 2002 and January 1, 2007, (2)
19 escheated payroll checks dated between March 20, 2002 and January 1, 2007, and (3) un-cashed,
20 un-replaced, and un-escheated payroll checks dated between March 20, 2002 and January 1, 2007.
21 The ending date of the study was selected because un-cashed checks do not have to be escheated
22 until one-year after their issue date. I compared the data sets (2) and (3) with data set (1), the set
23 of all payroll checks after March 20, 2002 that were discovered by plaintiffs in this case. The
24 results of the study are shown in the following table.

25
26 ///

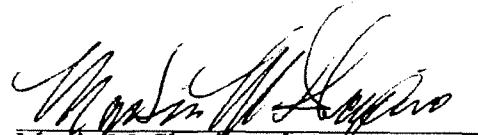
27 ///

28 ///

Data Set	Number	Dollar Value	Number: Percent of All Checks	Dollar: Percent of All Checks
All Checks	3,274,165	\$1,616,362,501		
Un-cashed & Un-escheated	818	\$ 287,053	0.02%	0.02%
Escheated	3,671	\$ 741,429	0.11%	0.05%

It is readily apparent in the above table that un-cashed, un-replaced Wal-Mart payroll checks represent less than two-tenths of one-percent of all payroll checks. This is true for both escheated or un-escheated checks, or the sum of both escheated and un-escheated payroll checks. It is true in terms of the number of checks and the dollar value of checks. Even if it were assumed, without any supporting evidence, that all of the un-cashed, un-replaced and un-escheated checks were checks issued upon termination, the 818 checks would represent less than one-percent of all 86,327 checks issued upon termination and would have a monetary value equal to 1.5% of the \$18,596,301 value of such checks.

I declare under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct. Executed on April 1, 2008, in Atlanta, Georgia.


Martin M. Shapiro, Ph.D.